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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Sixteenth session

SUMMARY RECORD OF THE 16th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 9 May 1997, at 10 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 7) (continued)

Initial report of Peru (E/1990/5/Add.29; HRI/CORE/1/Add.43/Rev.1; E/C.12/A/PER.1; E/C.12/Q/PER.1) (continued)

Implementation of articles 6 to 8 of the Covenant (continued)

1. At the invitation of the Chairperson, the members of the Peruvian delegation took places at the Committee table.

2. Mr. REYES (Peru) said that the Employment Development Act (Ley de fomento del empleo) criticized by the trade unions as being the root cause of the mass dismissal of 13,000 persons, did not violate the principal provisions governing labour and protected workers against unfair dismissal by stipulating that in the event of unfairness the individual concerned must be reinstated. Furthermore, a bill currently under preparation would grant workers the right to join a trade union even during their probationary period.

3. Referring to the allegation that the 1993 Constitution had spelled the end of security of employment and collective bargaining and had, moreover, facilitated the sacking of workers and the use of temporary personnel, he said that workers in Peru enjoyed adequate constitutional protection, as was evidenced by article 26 of the Constitution; which proclaimed equality of opportunity without discrimination, the irrevocable nature of the rights recognized by the Constitution and the law, and interpretation favourable to the worker of any provision whose meaning was in doubt. The 1993 Constitution therefore could not be said to have put an end to security of employment. It had replaced a rigid concept by the more flexible one of adequate protection of the worker, who could not be dismissed arbitrarily.

4. As to collective bargaining, under article 28 of the Constitution the State: (1) guaranteed trade union freedom; (2) encouraged collective bargaining and promoted the peaceful settlement of labour disputes, collective agreements being binding on the contracting parties; (3) regulated the right to strike so that it might be exercised in keeping with the interests of society. The State determined exceptions and limitations to that right. Act No. 25,593 and its consequent regulations encouraged the conclusion of collective agreements at all levels.

5. By way of the additional information requested on steps taken to eliminate child labour, he said that Decree-Law No. 26,102 set the length of the working week at 24 hours for minors aged 12 to 14 and 36 hours for minors aged 15 to 17. The Children's and Young Persons' Code provided, in article 22, that the State recognized the right of young persons to work, subject in particular to the condition that their work did not interfere with their development or their physical or mental health and did not prevent them from attending school. The Code provided equal protection for young persons working for an employer and those who were self-employed.

6. As far as the elimination of child labour was concerned, a memorandum of agreement had been concluded on 31 July 1996 between his Government and ILO with a view to: analysing the child labour situation in Peru; preparing and carrying out a national plan for the prevention of child labour; taking measures to that end; formulating national programmes, including the adoption of measures at the local or sectoral level; devoting particular attention to children working under conditions that were unacceptable or dangerous or violated fundamental human rights, and also to particularly vulnerable children, such as 12-year-olds of both sexes. A special multisectoral commission had been entrusted with the preparation of a national plan on the question of child labour and the protection of young workers (1996-2000), the object of the plan being progressively to eliminate the labour of young children, to protect young workers aged between 12 and 17, and to prohibit the employment of minors on dangerous work.

7. As to the question of discrimination at work, the Constitution provided, in article 2.2, that no one should be discriminated against on grounds of origin, race, gender, etc., while the Civil Code proclaimed the equality of men and women with regard to the exercise of civil rights. On 17 April 1997, Congress had adopted Act No. 26,772 to that effect. The Constitution also proclaimed the principle of access to work, without discrimination, of disabled persons among other vulnerable categories (arts. 1, 2.2, 23 and 26.1), while the Encouragement of Employment Act, which brought those principles into effect (arts. 2 and 122 among others), established special programmes designed to encourage the employment of categories of workers who had difficulty in finding a job. Other legislative instruments, such as Ministerial Decision No. 127 or Decree-Law No. 809, were also aimed at promoting the cause of disabled persons both at work and in general, for example, by exempting them from customs duties in respect of any artificial limbs or special vehicles they might require.

8. The CHAIRPERSON said that the role of the Committee was, first, to ascertain that the country whose report was being considered had the necessary legislative framework for the implementation of the Covenant, and secondly, to verify to what extent the practice in the country conformed to the provisions of the Covenant and the relevant national laws. He invited the Peruvian delegation to address the practical question of the implementation of economic, social and cultural rights.

9. Mr. REYES (Peru), referring to measures taken to combat unemployment among women, said that a programme for training women and providing them with employment had been instituted. Persons working in the informal sector were entitled to social security on a voluntary basis provided they observed the rules of membership and paid a monthly contribution. The indexed minimum legal wage in March and April 1997 had been 329.93 and 334.2 soles respectively. There was also a vocational training programme designed to teach various trades to young people with a view to turning them into skilled workers who would more readily find employment. In 1996, the number of youth employment and training contracts had more than trebled and that of apprenticeship contracts had risen by 40 per cent over the previous year.

10. The labour inspection service had been given a new duty, that of preventing labour disputes, which consisted, in particular, in informing

workers and employers of their rights and duties. The country currently had only 100 labour inspectors, owing to lack of funds. Peru was determined to implement the ILO conventions it had ratified, and the Congressional Labour Commission was at present studying a bill to amend Decree-Law No. 25,593 on collective bargaining, which included 10 of the 17 recommendations made by the ILO Committee on Freedom of Association in 1996.

11. The following system had been introduced on a provisional basis to encourage voluntary retirement: payment of 4, 8, 10 or 12 months' wages for a length of service of 1 to 5 years, 5 to 10 years, 10 to 15 years, and more than 15 years respectively.

12. Mr. RIEDEL said that the written reply said nothing about the practice of forced labour to pay off debt; the Peruvian delegation simply denied the existence of such a practice although it was attested by a number of non-governmental and international organizations. What was the use of legislative provisions if they were not implemented and if they failed to change the real state of affairs? Reports submitted by States parties should place less emphasis on rules which existed on paper and more on the progress achieved in implementing them.

13. Mr. TEXIER said that he was not very satisfied with the replies received. So far as unemployment was concerned, he had asked for information on unemployment in general and not only on unemployment among women. He would therefore like to know about trends in unemployment and what measures the Government was taking to reduce it. On the subject of the minimum wage, he also wished to know, taking account of the figures he had cited (minimum wage = 300 soles; cost of subsistence = 1,400 soles), whether it enabled a worker and his family to lead a decent life and, if not, what arrangements had been adopted to achieve that end. He would also like the delegation to indicate whether the number of labour inspectors had increased and whether their powers were sufficient to enable them to perform their duties efficiently. Lastly, he asked whether young people aged between 16 and 25 who were receiving in-house training were covered by collective agreements and by the protection of labour law, as was required by ILO Convention No. 87 ratified by Peru, and, if not, what steps were being taken in that direction.

14. Mr. ADEKUOYE, referring to the problem of sexual discrimination in the employment sphere and remarking that there was always some discrepancy between laws and their implementation, asked for the gender statistics of posts held in the public and private sectors. What difficulties were being encountered in that area? He also wished to know the number, type and percentage of labour accidents and occupational diseases over the past five years.

15. Mr. GRISSA said that, like Mr. Texier and Mr. Adekuoye, he was not very satisfied with the delegation's replies. Referring to paragraphs 362 and 363 of the report, which concerned children's right to work, he wondered how, in the case of a child of 12, it was possible to reconcile work with the observance of the child's rights to education, health care, etc. He also asked for clarification about the status of street children, who, according to paragraph 364, seemed to be considered workers.

16. Mr. ANTANOVICH said that, like Mr. Riedel, he was concerned about the situation of indigenous peoples, who were discriminated against in many fields, particularly employment, education and social services. He invited the Peruvian Government to take steps to remedy that situation, starting with a reform of the Constitution and the adoption of specific measures in the social sphere.

17. Mr. AHMED asked for information on what had happened to the Land Reform Act adopted by the Peruvian Government in the early 1970s. Had it been repealed? How much land had been redistributed and to how many thousands of indigenous peasants? Had they since been dispossessed of their land? Did they at least have a right to use the plots in question? If he understood paragraph 232 of the report correctly, four years after the adoption of the 1993 Constitution there were still no laws governing the existence of political parties in Peru; how, then, could such parties operate?

18. Mr. HERMOZA-MOYA (Peru) wondered from what sources Mr. Texier had obtained the figures he had cited concerning the cost of subsistence in Peru; it would have been worth-while to obtain the figures from the only body empowered to provide indices of that type on the basis of reliable data, namely, the National Institute of Statistics and Information. Penalties for non-observance of safety rules at the workplace were provided under the laws and the Criminal Code.

19. Mr. TEXIER said that it would be preferable if, instead of questioning him about his sources, Mr. Hermoza-Moya indicated the precise cost, according to official figures, of subsistence in Peru.

20. Mr. HERMOZA-MOYA (Peru) said that he would provide that information to the Committee as soon as possible. By way of guidance, however, he could already say that, according to figures supplied by the National Institute of Statistics and Information, food costs for an average household of five persons, including two income-earners, amounted to 526 soles and non-food costs to 416 soles. Replying to the criticism that his delegation spent too long describing laws and regulations rather than the actual situation, he said that, since any infringement of the law gave rise to liability, his delegation, when discussing the problem of racial or sexual discrimination, could not do otherwise than refer to the legislation in force and the guarantees provided by the Constitution. Referring to Mr. Grissa's question on the status of street children, he said that such children were in no way considered to be workers. Children who had been abandoned and reduced to begging received assistance from prevention and protection bodies specially created to combat that social phenomenon. When the Peruvian authorities spoke of children at work, they were referring to children in legal employment, who consequently enjoyed all the advantages and all the guarantees provided by law.

21. Mr. GRISSA, observing that information contained in the report contradicted that supplied by the Peruvian delegation, asked which should be given credence.

22. Mr. REYES (Peru) said that, as street children's plight was of great concern to them, the Peruvian authorities took pains to ensure that children

in a difficult situation who did "odd jobs", such as selling sweets, also attended school. With regard to the participation of women in economic activity, the marked increase in the economically active female population over the past 10 years and the fact that there were now women in high-level posts in both the public and the private sector testified to political will to improve women's employment status.

23. The results of land reform had unfortunately been less than expected for, while land had been redistributed to smallholders, they had received neither the technical nor the financial support necessary to work it. The Ministry of Agriculture was elaborating policies and, with the financial aid of the international community, introducing programmes to provide technical assistance to the peasantry. The Government was also endeavouring to encourage by means of technical and financial support the return to the land of persons who had been obliged to leave and had migrated to the capital under the military regime. In view of the country's limited financial resources, the task would, however, be long and arduous.

24. Mr. WIMER agreed that land reform could not be successful if the State merely redistributed land and did nothing to help the peasants to work it. Nevertheless, he wished to know what had become of the land reform undertaken in the early 1970s, and in particular, to whom the lands in question belonged today.

25. Mr. SADI said that, while he sympathized with Peru about the economic difficulties that accounted for the fall in the standard of living, he was chiefly worried by the trend towards polarization of Peruvian society into two groups, the haves and the have-nots.

26. Mr. REYES (Peru) said that article 88 of the Constitution guaranteed the right of peasant communities to ownership of their lands. Furthermore, Peru had ratified ILO Convention No. 169, which was the main instrument setting forth the rights of indigenous populations. There existed a set of laws to guarantee ownership rights over their lands to peasant and indigenous communities, protect natural resources and keep forests intact. Although Peru was a developing country, everything was being done to elaborate policies and take action towards implementing the provisions of the Covenant in that area.

27. Mr. WIMER asked once again whether the Peruvian Government was continuing to distribute lands and on what scale.

28. Mr. AHMED asked how many thousands or millions of hectares had been distributed to peasants, and especially to indigenous populations, under the Land Reform Act. Had the peasants been able to keep those lands after the repeal of the Act? If the lands had been confiscated, did that explain, if only partially, the current political discontent in Peru?

29. Mr. REYES (Peru), replying to Mr. Wimer, confirmed that the distribution of land, with the corresponding title deeds, was continuing. Precise information attesting the Government's political will in that regard would be furnished later. There had been expropriations, but they had concerned the latifundia more than the lands of peasant communities. More detailed information would be provided on that point as well.

30. Ms. JIMENEZ BUTRAGUEÑO asked whether the Committee could have the text of Act No. 26,505 so that it might verify whether indigenous populations had the same rights as other owners; some information implied they did not.

31. Mr. TEXIER, reverting to the subject of Decree-Law No. 528, asked why Peru had ignored the request made in the ILO in connection with Convention No. 87 as relating to the employment of young people from 16 to 25 years of age. It appeared that young people in that age category were excluded from Peruvian labour law and were not entitled to join trade unions. What was the reason for that discrimination?

32. Mr. REYES (Peru) said that the vocational and technical training programmes, whose innovative character he wished to emphasize, did not give young people all the rights of regular workers but offered them the chance of initial experience of the working environment in either the public or the private sector. However, the young people in question enjoyed all the other rights enshrined in labour law.

Implementation of article 9

33. The CHAIRPERSON invited the Peruvian delegation to reply to questions 17, 18 and 19 of the list of issues (E/C.12/Q/PER.1).

34. Mr. REYES (Peru), replying to question No. 17, said that the Peruvian Social Security Institute (IPSS), which employed 16,469 persons, had in 1995 conducted a total of 10,134,845 consultations involving 2,484,589 patients. According to a survey carried out in 1994, 20.5 per cent of the Peruvian population were insured with IPSS, 1.9 per cent with the armed forces and police, and 1.5 per cent with private insurance companies. The Ministry of Health was running 81 of the country's health establishments, mainly in the provinces and the country's remotest areas where the private sector was unable to operate and the workforce was not large enough to justify the presence of IPSS. In 1995, health spending had totalled 2.96 billion dollars, of which IPSS had accounted for 33.2 per cent.

35. There were two possible reasons why in Lima unemployment was far higher among women than men. First, it was likely that women entering the labour market did so in small enterprises, where obstacles to the entry of new workers were fewer. Second, the capital, Lima, was far more developed than other parts of the country and businesses there required a higher level of education in their workers. That did not mean that women worked less than men: most activities performed by women were not remunerated and were not included in official statistics.

36. Replying to question 19, he said that domestic workers' social security rights were set forth in Decree-Law No. 19,990 on the national pensions system and Decree-Law No. 22,482 on health insurance. A domestic worker thus insured was entitled to health services in the event of sickness or inability to work for a prolonged period (meaning three or four consecutive months).

37. Mr. SADI understood that, parallel with the national health system, there existed a National Social Compensation and Development Fund (FONCOPES).

What percentage of the national budget was allocated to that fund? How many persons had received benefits from the fund, and what were the criteria for entitlement?

38. Mr. TEXIER, noting that paragraph 299 of the initial report stated that maternity allowances were payable to women with compulsory insurance "with the exception of civil construction workers, baker's assistants, port workers and home workers", asked for an explanation of those exceptions. According to other paragraphs of the same report, homeworkers did not have appropriate welfare cover.

39. According to paragraph 328 of the report, social security allowances were paid in the event of total or partial unemployment. How many workers had received such allowances and what part of the national budget did they represent?

40. Mr. GRISSA expressed surprise that the unemployment rate among women was approximately the same as for men in the provinces, but higher in Lima. Did that mean that when women were unemployed they were counted as housewives and no longer appeared in statistics for the economically active population?

41. Ms. JIMENEZ BUTRAGUEÑO said that she was greatly concerned by the existence in Peru of two pensions systems. Those systems, the public one operated by IPSS, and the private one set up under Act No. 25,967, were not complementary and workers had to choose between them. How did the two systems coexist? Was it possible to transfer from one to the other? Was there not a danger of infringement of workers' rights? The apparently shaky financial situation of the entities administering private pensions systems could be damaging to workers' interests.

42. Mr. CEVILLE said that, according to some sources, the private insurance companies had suffered losses and pensioners had no access to information on how their pensions were being managed. What was the Peruvian Government doing to protect pensioners' interests in the event of possible bankruptcy of those pension funds?

43. Mr. ANTANOVICH asked for further information in connection with the statement in paragraph 329, subparagraph (b), on conditions for entitlement to unemployment benefits that "unemployment must be due to causes beyond the worker's control, in other words, he must not have been dismissed as a result of his own action, as would be the case for those who voluntarily stop working to go on strike ...". Was there a law to ensure that such restrictions did not run counter to the right to strike of workers seeking an improvement of their working conditions or wages?

44. Mr. REYES (Peru), replying to Mr. Sadi, said that FONCOPES, a prestigious institution which contributed towards the development of all regions of the country, had continued to execute what were known as "double-impact projects", on the one hand to help the poorest members of the population and on the other to revitalize the country's medium-sized and small enterprises and micro-enterprises. By August 1996, after five years of activity, FONCOPES had executed 20,000 projects in most areas of the country to a total value of over $750 million, 74 per cent of that sum had come from

national resources and 26 per cent from international cooperation. Peru devoted a larger share of its resources to fighting poverty than any other country in Latin America.

45. Replying to Mr. Texier, he explained that domestic workers, who were called homeworkers in Peru, were insured, but on an optional basis. In any event they received board and lodging and were entitled to weekly rest. As for the statistics of female unemployment referred to by Mr. Grissa, precise figures would be communicated to the Committee at a later stage.

46. With regard to the existence of two pensions systems, he drew a distinction between public pension funds financed out of the national budget and private funds financed by enterprises. However, neither category escaped State control and their coexistence caused no problems because their goal was the same: to provide insurance for workers. As the private pension funds had been created only recently, it was not possible to speak of bankruptcy or to measure how efficiently they were run. The important point was that membership of the private schemes had risen and that the changes in the pensions field had as their sole object the improvement of the situation of pensioners whether in the public or the private sector. He assured Ms. Jimenez Butragueño that the occasional purely administrative shortcomings had nothing to do with any political intention on the part of the Government.

47. Mr. HERMOZA MOYA (Peru), replying to the question about the right to strike raised by Mr. Antanovich, said that that right was enshrined in the country's Constitution.

48. Mr. REYES (Peru) said that pension rights were fully guaranteed by the Peruvian State and that no worker who met the requisite conditions could be deprived of his or her pension.

Implementation of articles 10 and 11 of the Covenant

49. Mr. REYES (Peru), replying to the question in paragraph 20 of the list of issues (E/C.12/Q/PER.1), said that there existed no constitutional provision limiting the right to marry, which was enshrined in article 4 of the Constitution. On the other hand, that right was restricted by articles 241 to 244 of the Civil Code, the text of which would be furnished to the Committee. Thus, children could be authorized to marry for a valid reason, provided they were aged at least 16 in the case of boys and at least 14 in the case of girls.

50. Concerning the question in paragraph 22 of the list of issues, he confirmed that 54 per cent of the Peruvian population had been living below the poverty line in 1991 (E/1990/5/Add.29, para. 343). In reply to the question in paragraph 23 of the list, he explained that INABIF had since 1993 been carrying out a national programme for the comprehensive welfare of under-age workers and street children. The programme, which was being executed in cooperation with the Inter-American Development Bank (IDB) and the United Nations Children's Fund (UNICEF), endeavoured to help children to meet their essential needs in terms of food, clothing, housing and health and also placed emphasis on prevention and treatment in the health sphere.

51. Mr. GRISSA, speaking on article 10 of the Covenant, asked whether persons who were not married also had a right to have a family. Expressing surprise that divorce had not been mentioned in paragraphs 336 to 351 of the initial report, he asked whether divorce was legal in Peru and, if so, how common it was. Were the rights of divorced women and their children protected?

52. Ms. BONOAN-DANDAN said that the delegation had not answered the question raised in paragraph 21 of the list of issues. Referring to the participation of non-governmental organizations in family planning (E/1990/5/Add.29, para. 341), she asked what role those organizations played in national life and to what extent they contributed towards the elaboration of policies or administrative measures relating to the status of women. She also requested additional information on women not entitled to maternity benefits.

53. With regard to street children, she would welcome information not only on the programmes intended for them but also of difficulties encountered by the Government. What steps were being taken to protect street children from, for example, sexual exploitation? What did the delegation think about the information contained in the note by the secretariat (E/C.12/A/PER.1) concerning violence against children and women? Did the Government have any statistics on that subject?

54. Mr. RIEDEL asked what had been the results of the INABIF programmes mentioned in paragraph 379 of the addendum to the initial report and how many children had received assistance since 1992.

55. Mr. MARCHAN ROMERO, speaking on article 11 of the Covenant, asked why the provision of the 1979 Constitution concerning the right to a decent standard of living was not reproduced in the present Constitution. Was that right set forth in some other legal instrument?

56. Mr. ADEKUOYE, speaking on article 10 of the Covenant, asked the delegation whether the impact of family planning on the various strata of the population had been evaluated. He also asked for explanations of the disappearance of the rule providing for the establishment of crèches at or near the workplace as a help to working women, and of the change in the law as a result of which pregnant women could now be dismissed within 90 days either side of the date of their confinement.

57. Referring to article 11 of the Covenant, he asked for clarifications concerning the soup kitchens mentioned in paragraph 355 of document E/1990/5/Add.29, particularly information about their mode of operation. With reference to the right to food, he asked what measures had been taken to increase agricultural production.

58. Mr. SADI asked what was being done to protect the Amazonian ecosystem in order to avoid endangering the way of life and means of subsistence of the indigenous population.

59. Mr. THAPALIA, quoting information contained in the 1996 report of the United States Department of State (E/C.12/A/PER.1), asked below what age child labour was prohibited and whether the percentage of children working in order

to survive had diminished over the past five years. Referring to paragraphs 353 and 356 of document E/1990/5/Add.29, he asked what steps the Government had taken to meet the essential needs of the most disadvantaged groups of the population and how the situation had developed over the past five years.

60. Mr. TEXIER, noting that the initial report of Peru contained no information on the right to housing and that no question on that subject was included in the list of issues, stressed the need for additional information in writing, particularly concerning the housing shortage, current trends in that regard, government and public-sector plans for the construction of housing, etc.

61. Ms. JIMENEZ BUTRAGUEÑO, speaking on the question of the right to housing, asked whether the Government had a plan for rehousing tenants the controls on whose rents would be lifted from 8 December 1997 and who found themselves unable to pay the higher charges.

62. Mr. HERMOZA-MOYA (Peru), replying to Mr. Grissa, said that divorce had been recognized in Peruvian civil law for decades. A divorced woman had the same rights as a married woman. She was entitled to a share of the goods acquired during the marriage and to alimony. Persons living in a non-marital union were considered to constitute a family and enjoyed the same rights as married persons.

63. Replying to Mr. Riedel's question, he said that since 1990, after a period marked by terrorism and by inaction on the part of the public authorities, Peru had entered upon a stage of development where the most disadvantaged groups, in particular minors and abandoned children, received priority attention with regard to the meeting of their essential needs and to prevention. The right to housing was proclaimed in the Constitution. The Government not only had a housing construction policy, but was also engaged, through the Formalization Commission (COFOPRI), in regularizing the spontaneous occupation and construction of housing by granting deeds of ownership to the owners.

64. He appealed to members of the Committee to show understanding. The progress achieved testified to the Government's will to respect the covenants and conventions elaborated by the international community. His country's problems could be resolved only gradually within the overall framework of its development.

The meeting rose at 1.05 p.m.